

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

L. GLENN SHADOAN AND SUE SHADOAN)	
)	
COMPLAINANTS)	
)	
V.)	CASE NO. 2011-00020
)	
BLUEGRASS WIRELESS, LLC)	
)	
DEFENDENT)	

ORDER

L. Glenn Shadoan and Sue Shadoan ("Complainants"), by and through counsel, have filed a formal complaint with the Commission against Bluegrass Wireless, LLC ("Bluegrass Wireless") in which they seek the Kentucky Public Service Commission ("Commission") to assert jurisdiction over the siting of a cellular tower in Laurel County, Kentucky and for the PSC to request that Bluegrass Wireless provide a complete application, a review of the application for compliance issues, a hearing to be held on the issue, and any removal or remedial actions that may be warranted. The basis that the Complainants provide in support of their requested relief is that the Commission has jurisdiction over this cellular tower because the Laurel County Planning and Zoning Commission has not adopted planning and zoning regulations.

The cellular tower in question has been the subject of litigation. The Kentucky Supreme Court issued a ruling on the jurisdiction of this particular tower in Kentucky Public Service Commission v. L. Glenn Shadoan, et al., ___ S.W.3d___, 2010 WL

4679513 (Ky. Nov. 18, 2010). In that decision, the Supreme Court clearly states that jurisdiction over this particular tower resides with the London/Laurel County Joint Planning Commission. "Any further proceedings, if any, on Bluegrass Cellular's application must occur before the London/Laurel County Joint Planning Commission."¹ Furthermore, the Supreme Court stated "the planning unit's compliance with the comprehensive plan provisions is mandatory, see KRS 100.183-100.197, whereas the regulation of property through zoning ordinances is permissive."² Exhibit A of the Complainants' complaint states that Laurel County does have a comprehensive plan on file in the Office of the Planning Commission. The Supreme Court went further to state, "[h]ence, a local planning unit is not required to enact **any** zoning regulations for its area, let alone regulations that specifically pertain to cellular antenna towers"³ (emphasis added). The argument being raised in the complaint is the same argument presented by Justice Scott in the dissenting opinion. The Supreme Court did not agree with this argument and plainly stated the Commission does not have jurisdiction over this matter.

The Commission is required by 807 KAR 5:001, Section 12(4)(a) to review each formal complaint upon its filing to determine whether the complaint establishes a *prima facie* case. A complaint establishes a *prima facie* case when, on its face, it states sufficient allegations that, if uncontradicted by other evidence, would entitle the

¹ *Kentucky Public Service Commission vs. L. Glenn Shadoan, et. al.*, ___ S.W.3d___, 2010 WL 4679513 (Ky. Nov. 18, 2010).

² *Id.*

³ *Id.*

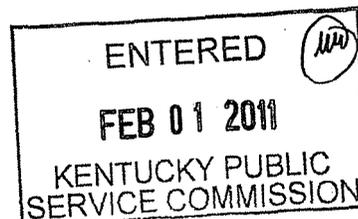
complainant to the requested relief. If a complaint fails to establish a *prima facie* case, it may be dismissed.

For the reasons stated above, the Commission does not have jurisdiction over the cellular tower in question and, therefore, the complaint fails to establish a *prima facie* case.

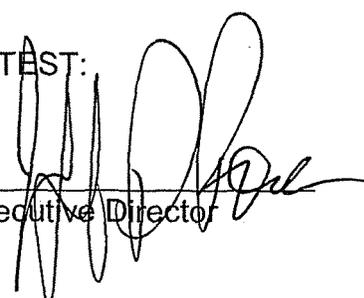
IT IS THEREFORE ORDERED that:

1. The Complainants' complaint is dismissed based on the lack of Commission jurisdiction in this matter; therefore, the complaint fails to establish a *prima facie* case pursuant to 807 KAR 5:001, Section 12.
2. This proceeding is closed and removed from the Commission's docket.

By the Commission



ATTEST:


Executive Director

Ron Boright
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Bluegrass Wireless, LLC
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Hon. Tom Fitzgerald
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